

Senate Bill No. 1744

Passed the Senate August 26, 2004

Secretary of the Senate

Passed the Assembly August 23, 2004

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of
_____, 2004, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Sections 1305, 1306, and 1308 of, to add Sections 1305.5 and 1309 to, and to repeal Section 1305.4 of, the Penal Code, relating to bail services.

LEGISLATIVE COUNSEL'S DIGEST

SB 1744, Dunn. Bail services.

Existing law provides for a right to bail, as specified, and provides for the posting of a bond in lieu of cash bail. Bail may be forfeited in accordance with specified procedures that require notice be provided to the surety or depositor of money left as bond if the amount of the bail is in excess of \$400. Existing law provides that if the surety is an authorized corporate surety, and if the bond plainly displays the mailing address of the corporate surety and the bail agent, then any required notice of the forfeiture shall be mailed to the surety at that address and to the bail agent.

This bill would require the bond to plainly display the mailing addresses of both the statutory home office of the corporate surety and the bail agent if the surety is an authorized corporate surety. It would separately require notice to be sent to both addresses to comply with these provisions.

Under existing law, when a defendant comes before the court or otherwise is brought within the court's control within 180 days after forfeiture or notice of forfeiture of bail, as specified, the court is authorized to vacate the forfeiture. Existing law requires that a motion relating to vacating forfeiture be filed within the 180-day period and heard within 30 days of the expiration of that 180-day period. The 30-day period may be extended for good cause. Existing law also authorizes a surety or depositor of bail to file a motion, based upon good cause, to extend the 180-day period of time, not exceeding 180 days from its order. Existing law authorizes the court, in its discretion, to require that the moving party in these proceedings provide 10 days' prior notice to the applicable prosecuting agency as a condition precedent to granting a motion.

This bill would oblige the court to require that 10 days' notice as a condition precedent to granting this motion.



Under existing law, a court that has declared a bond forfeited, after the period provided in law for vacating the forfeiture has passed, regardless of the amount of the bail, must enter a summary judgment against each bondsman named in the bond in the amount for which the bondsman is bound. Existing law provides that this judgment shall be the amount of the bond plus costs, as specified. Existing law provides for an appeal procedure from a summary judgment against a surety or bondsman, and provides for an appeal bond to be supplied by a surety other than one filing the appeal, as specified.

This bill would provide for the repeal of the procedure for applying to a court to extend the original 180 days permitted to vacate a forfeiture of bail for up to an additional 180 days, and would instead provide that the surety or depositor of bail shall be given an additional 180 days to vacate the forfeiture upon the deposit with the court, prior to the expiration of the original 180 days, of the full amount of the undertaking of bail or the bail bond, as specified. It would provide that those funds shall be kept in escrow and used by the court to satisfy any summary judgment order or final decision upholding the summary judgment on appeal, but shall be returned, with interest, if any, upon the exoneration of the bond or reversal of the summary judgment, as specified. It would also provide that an appeal of an order of summary judgment against an undertaking of bail or bail bond must be accompanied by an appeal bond in compliance with specified requirements, or by the deposit described above.

Existing law precludes acceptance by a court or magistrate of any person or corporation as surety on bail if any summary judgment against that person or surety under these provisions is unpaid after 30 days, except upon appeal or as otherwise specified.

This bill would require the clerk of the court to file a notice of a surety's failure to pay a summary judgment with the Department of Insurance if a summary judgment under those provisions remains unpaid after 30 days following the service of the notice of summary judgment.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:



(a) A citizen's right to bail is fundamental and guaranteed by both the Eighth Amendment to the United States Constitution and Section 12 of Article I of the California Constitution. Consistent with this right, Section 28 of Article I of the California Constitution requires that the primary consideration in the setting of bail is public safety.

(b) In recent years, there has been a rise in private surety bail bonds being issued on some high-risk defendants without adequate collateral to insure their appearance, and in some private surety bail bond defaults, resulting in a threat to public safety and a fiscal loss to cities and counties.

(c) In the interest of assuring that the right to bail is not compromised and that public safety is protected, it is the intent of the Legislature to do both of the following:

(1) To make it a condition precedent to an extension of the 180-day period to vacate the forfeiture and exonerate the bond that the full amount of the undertaking of bail or bail bond be deposited into an escrow account maintained by the superior court, and that this deposit be made prior to the expiration of the 180-day period provided in Section 1305.

(2) To require an appeal bond for any appeal of an order of forfeiture or summary judgment unless the full amount of the undertaking of bail or bail bond has been deposited into an escrow account maintained by the superior court.

SEC. 2. Section 1305 of the Penal Code is amended to read:

1305. (a) A court shall in open court declare forfeited the undertaking of bail or the money or property deposited as bail if, without sufficient excuse, a defendant fails to appear for any of the following:

(1) Arraignment.

(2) Trial.

(3) Judgment.

(4) Any other occasion prior to the pronouncement of judgment if the defendant's presence in court is lawfully required.

(5) To surrender himself or herself in execution of the judgment after appeal.

However, the court shall not have jurisdiction to declare a forfeiture and the bail shall be released of all obligations under the bond if the case is dismissed or if no complaint is filed within 15 days from the date of arraignment.



(b) If the amount of the bond or money or property deposited exceeds four hundred dollars (\$400), the clerk of the court shall, within 30 days of the forfeiture, mail notice of the forfeiture to the surety or the depositor of money posted instead of bail. At the same time, the court shall mail a copy of the forfeiture notice to the bail agent whose name appears on the bond. The clerk shall also execute a certificate of mailing of the forfeiture notice and shall place the certificate in the court's file. If the notice of forfeiture is required to be mailed pursuant to this section, the 180-day period provided for in this section shall be extended by a period of five days to allow for the mailing.

If the surety is an authorized corporate surety, then the bond shall plainly display the mailing addresses of both the statutory home office of the corporate surety and the bail agent. Notice of the forfeiture shall be mailed to the surety at the statutory home office and to the bail agent, and mailing alone to the surety or the bail agent shall not constitute compliance with this section.

The surety or depositor shall be released of all obligations under the bond if any of the following conditions apply:

(1) The clerk fails to mail the notice of forfeiture in accordance with this section within 30 days after the entry of the forfeiture.

(2) The clerk fails to mail the notice of forfeiture to the surety at the address printed on the bond.

(3) The clerk fails to mail a copy of the notice of forfeiture to the bail agent at the address shown on the bond.

(c) (1) If the defendant appears either voluntarily or in custody after surrender or arrest in court within 180 days of the date of forfeiture or within 180 days of the date of mailing of the notice if the notice is required under subdivision (b), the court shall, on its own motion at the time the defendant first appears in court on the case in which the forfeiture was entered, direct the order of forfeiture to be vacated and the bond exonerated. If the court fails to so act on its own motion, then the surety's or depositor's obligations under the bond shall be immediately vacated and the bond exonerated. An order vacating the forfeiture and exonerating the bond may be made on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release.

(2) If, within the county where the case is located, the defendant is surrendered to custody by the bail or is arrested in the underlying



case within the 180-day period, and is subsequently released from custody prior to an appearance in court, the court shall, on its own motion, direct the order of forfeiture to be vacated and the bond exonerated. If the court fails to so act on its own motion, then the surety's or depositor's obligations under the bond shall be immediately vacated and the bond exonerated. An order vacating the forfeiture and exonerating the bond may be made on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release.

(3) If, outside the county where the case is located, the defendant is surrendered to custody by the bail or is arrested in the underlying case within the 180-day period, the court shall vacate the forfeiture and exonerate the bail.

(4) In lieu of exonerating the bond, the court may order the bail reinstated and the defendant released on the same bond if both of the following conditions are met:

(A) The bail is given prior notice of the reinstatement.

(B) The bail has not surrendered the defendant.

(d) In the case of a permanent disability, the court shall direct the order of forfeiture to be vacated and the bail or money or property deposited as bail exonerated if, within 180 days of the date of forfeiture or within 180 days of the date of mailing of the notice if notice is required under subdivision (b), it is made apparent to the satisfaction of the court that both of the following conditions are met:

(1) The defendant is deceased or otherwise permanently unable to appear in the court due to illness, insanity, or detention by military or civil authorities.

(2) The absence of the defendant is without the connivance of the bail.

(e) In the case of a temporary disability, the court shall order the tolling of the 180-day period provided in this section during the period of temporary disability, provided that it appears to the satisfaction of the court that the following conditions are met:

(1) The defendant is temporarily disabled by reason of illness, insanity, or detention by military or civil authorities.

(2) Based upon the temporary disability, the defendant is unable to appear in court during the remainder of the 180-day period.



(3) The absence of the defendant is without the connivance of the bail.

The period of the tolling shall be extended for a reasonable period of time, at the discretion of the court, after the cessation of the disability to allow for the return of the defendant to the jurisdiction of the court.

(f) In all cases where a defendant is in custody beyond the jurisdiction of the court that ordered the bail forfeited, and the prosecuting agency elects not to seek extradition after being informed of the location of the defendant, the court shall vacate the forfeiture and exonerate the bond on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release.

(g) In all cases of forfeiture where a defendant is not in custody and is beyond the jurisdiction of the state, is temporarily detained, by the bail agent, in the presence of a local law enforcement officer of the jurisdiction in which the defendant is located, and is positively identified by that law enforcement officer as the wanted defendant in an affidavit signed under penalty of perjury, and the prosecuting agency elects not to seek extradition after being informed of the location of the defendant, the court shall vacate the forfeiture and exonerate the bond on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release.

(h) As used in this section, “arrest” includes a hold placed on the defendant in the underlying case while he or she is in custody on other charges.

(i) A motion filed in a timely manner within the 180-day period may be heard within 30 days of the expiration of the 180-day period. The court may extend this 30-day period upon a showing of good cause. The motion may be made by the surety insurer, the bail agent, the surety, or the depositor of money or property, any of whom may appear in person or through an attorney. The court shall require that the moving party provide 10 days’ prior notice to the applicable prosecuting agency as a condition precedent to the motion.

SEC. 3. Section 1305.4 of the Penal Code is repealed.

SEC. 4. Section 1305.5 is added to the Penal Code, to read:

1305.5. (a) If, prior to the expiration of the time period provided in Section 1305, the surety, or the depositor of bail,



deposits funds in the full amount of the undertaking of bail or bail bond into an escrow account maintained by the superior court, then the time specified in Section 1305 shall be extended by an additional 180 days. Timely payment of these funds as a condition precedent to the 180-day extension shall not be waived by any court. The court may impose a fee of up to fifty dollars (\$50) for the cost of maintaining the escrow account.

(b) If the order forfeiting bail is vacated and the bail bond exonerated for any reason, the superior court shall, within 30 days of the entry of such order, return to the party that deposited the funds the full amount of the funds deposited, plus interest if any.

(c) After entry of summary judgment pursuant to Section 1306, or after a final decision upholding the summary judgment on appeal, the superior court shall apply the funds deposited into the escrow account to satisfy the summary judgment. If a summary judgment is reversed, the bond amount shall be returned to the party that deposited the funds within 30 days of the filing of the remittitur reversing the summary judgment.

SEC. 5. Section 1306 of the Penal Code is amended to read:

1306. (a) When any bond is forfeited and the period of time specified in Section 1305, or as extended by Section 1305.5, has elapsed without the forfeiture having been set aside, the court which has declared the forfeiture, regardless of the amount of the bail, shall enter a summary judgment against each bondsman named in the bond in the amount for which the bondsman is bound. The judgment shall be the amount of the bond plus costs, and notwithstanding any other law, no penalty assessments shall be levied or added to the judgment.

(b) If a court grants relief from bail forfeiture, it shall impose a monetary payment as a condition of relief to compensate the people for the costs of returning a defendant to custody pursuant to Section 1305, except for cases where the court determines that in the best interest of justice no costs should be imposed. The amount imposed shall reflect the actual costs of returning the defendant to custody. Failure to act within the required time to make the payment imposed pursuant to this subdivision shall not be the basis for a summary judgment against any or all of the underlying amount of the bail. A summary judgment entered for failure to make the payment imposed under this subdivision is subject to the provisions of Section 1308, and shall apply only to



the amount of the costs owing at the time the summary judgment is entered, plus administrative costs and interests.

(c) If, because of the failure of any court to promptly perform the duties enjoined upon it pursuant to this section, summary judgment is not entered within 90 days after the date upon which it may first be entered, the right to do so expires and the bail is exonerated.

(d) A dismissal of the complaint, indictment, or information after the default of the defendant shall not release or affect the obligation of the bail bond or undertaking.

(e) The district attorney or county counsel shall:

(1) Demand immediate payment of the judgment within 30 days after the summary judgment becomes final.

(2) If the judgment remains unpaid for a period of 20 days after demand has been made, shall forthwith enforce the judgment in the manner provided for enforcement of money judgments generally, except if an appeal is taken that complies with subdivision (f).

(f) In all cases where funds have not been previously deposited under Section 1305.5, if an appeal is taken, an appeal bond shall be posted in compliance with Section 917.1 of the Code of Civil Procedure or the full amount of the undertaking of bail or bail bond shall then be deposited according to the procedure specified in Section 1305.5. Unless funds have been deposited with the superior court pursuant to Section 1305.5, the requirement of an appeal bond shall not be waived by any court. The appeal bond shall be provided by a surety other than the one filing the appeal.

(g) The right to enforce a summary judgment entered against a bondsman pursuant to this section shall expire two years after the entry of the judgment.

SEC. 6. Section 1308 of the Penal Code is amended to read:

1308. (a) No court or magistrate shall accept any person or corporation as surety on bail if any summary judgment against that person or corporation entered pursuant to Section 1306 remains unpaid after the expiration of 30 days after service of the notice of the entry of the summary judgment, provided that, if during the 30 days an action or proceeding available at law is initiated to determine the validity of the order of forfeiture or summary judgment rendered on it, this section shall be rendered inoperative until that action or proceeding has finally been determined, and

provided that, if an appeal is taken, the procedure set forth in subdivision (f) of Section 1306 shall apply.

(b) The clerk of the court in which the judgment is rendered shall serve notice of the entry of judgment upon the judgment debtor within five days after the date of the entry of the summary judgment.

SEC. 7. Section 1309 is added to the Penal Code, to read:

1309. The clerk of the court shall submit to the Department of Insurance a notice of a surety's failure to pay a summary judgment if any summary judgment against the person or corporation entered pursuant to Section 1306 remains unpaid after the expiration of 30 days after service of the notice of the summary judgment.



Approved _____, 2004

Governor

